



May 24, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-2137

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147613.

The Texas Department of Criminal Justice (the "department") received a request for all information relating to the department's Internal Affairs Investigation #UF.15.2454.00.ST. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.117, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.131(a) relating to the department's inmates states:

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 of the Government Code provides in relevant part:

Notwithstanding Section 508.313 or 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with [the department] is subject to required disclosure under Section 552.021:

.....

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

You inform us that the investigation into Internal Affairs Investigation #UF.15.2454.00.ST is ongoing and involves allegations of the use of unnecessary force. Upon review of the submitted information, we conclude that the department may withhold most of the information from the requestor under section 552.131(a), as it is "information about an inmate who is confined in a facility operated by or under a contract with the department." We note, however, that section 552.131 is explicitly made subject to section 552.029. Under section 552.029(8), "basic information" regarding an alleged use-of-force incident is subject to required disclosure. Accordingly, with regard to the information you submitted, pursuant to section 552.029(8), the department may not withhold basic information regarding the alleged incident based on section 552.131. Basic information includes the time and place of the incident, names of the inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.

You also assert that the submitted information is excepted from disclosure by sections 552.101 and 552.107(2) in conjunction with the decision in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir. 1982). Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.107(2) states that information is excepted from required public disclosure if "a court by order has prohibited disclosure of the information." The *Ruiz* decision restricted the dissemination of "sensitive information" regarding inmates. The *Ruiz* final judgment, *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., entered December 11, 1992), gave the Board of Criminal Justice (the "Board") authority to define the term "sensitive information." The Board met on January 21, 2000, and decided that "the term 'Sensitive Information' shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code." Thus, information in the categories delineated in section 552.029 is not excepted from required public disclosure by section 552.107(2) in conjunction with the *Ruiz* court order. Nor is it made confidential by judicial decision under section 552.101. Therefore, the information that is made public under section 552.029(8), which in this case is basic information regarding the use of force, is not excepted from disclosure by section 552.101 or 552.107(2).

You also assert claims of exception for the information under section 552.108. Section 552.108 does not except the basic information delineated under section 552.029(8). *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536

S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Accordingly, the basic information under section 552.029(8) is not excepted from disclosure by section 552.108. Because section 552.131 is dispositive in this case, we do not address your section 552.117 claim.

In summary, the department must release to the requestor basic information regarding its Internal Affairs Investigation #UF.15.2454.00.ST under section 552.029(8) of the Government Code. The rest of the requested information is excepted from disclosure under section 552.131.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

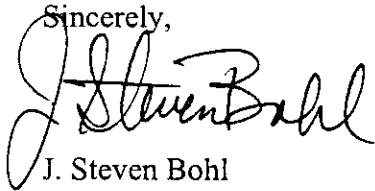
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Steven Bohl". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 147613

Encl: Submitted documents

cc: Sgt. Shannon Cagle
3056 Corley Street
Beaumont, Texas 77701
(w/o enclosures)